

**PRISONS & CORRECTIONS SECTION**  
Respectfully submits the following position on:

\*

**Parole Board and Commutation Process**

\*

The Prisons & Corrections Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Prisons & Corrections Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Prisons & Corrections Section is 153.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 11. As to Issue 1, the number who voted in favor of the position was 8; the number who voted against the position was 2; one person abstained. As to Issue 5, the number who voted in favor of the position was 10; the number who voted against the position was 1. As to Issues 2, 3, 4, 6, 7, and 8, the number who voted in favor of the position was 11; the number who voted against the position was 0.

## 5. Eliminate Judicial Vetoes of Lifer Paroles or Require Procedural Safeguards

Disclosure pursuant to Administrative Order 2004-1: The Prisons and Corrections Section is a voluntary section of the State Bar, not the State Bar itself. The position expressed here is that of the Section. The State Bar has no position on the issues regarding the parole and commutation process discussed herein. The Prisons and Corrections Section has a membership of approximately 140. The Section's governing body, a Council elected by the membership, is composed of 15 voting members. This policy position was adopted, after due notice, at a meeting of the Section's Council on January 8, 2011. The vote was 10 yes, 1 no, 0 abstentions.

**Issue:** Until 1941, all life sentences in Michigan were non-parolable and release could only occur by commutation. When the "lifer law", MCL 791.234, was enacted, three procedural requirements were added to the parole process for lifers. The Board must conduct a public hearing, the parole period must be at least four years, and the sentencing judge must be given the opportunity to object. In 1953, the statute was amended so that the objection could be filed by the successor to a sentencing judge who was retired or deceased.

Currently, if the judge objects in writing within 30 days of receiving notice that the Board intends to conduct a public hearing, the Board loses jurisdiction to grant parole and the scheduled public hearing is canceled. There are no procedural safeguards. The judge is not required to hold a hearing or solicit input from the prisoner, but can speak off the record to the prosecutor, the victim or anyone else. The judge does not have to state a reason for objecting and the judge's decision is not subject to appellate review. The result is a lack of consistency statewide in parole outcomes and, in many cases, significant added expense to the Michigan Department of Corrections.

Statistics available for the period from January 2007 through February 2010 show that of 25 judicial objections, 16 were based in whole or in part on the offense or effect on the victim, seven were based, at least in part, on current information about the prisoner, and six gave no reason at all. These statistics demonstrate arbitrariness in the process, which can be compounded by the fact that a majority of the objections are not by the sentencing judge, but the second or third successor judge.

**Position:** The Section believes that the opportunity to exercise a judicial objection should be abolished, especially as applied to successor judges who had no involvement with the trial or sentence.

If the opportunity to object is to remain, the Section recommends amending the statute to require that: 1) a judge who is considering objecting to a lifer parole must give the prisoner notice and an opportunity to present positive information and to respond to negative information on which the judge may rely; 2) a judicial objection must be supported by substantial and compelling reasons; and 3) the judge's objection be subject to appellate review.<sup>1</sup>

---

<sup>1</sup> On September 3, 2010 the Council took a position supporting the recommendations in this paragraph.